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CONTENTS

REPORTS

NOTES OF THE WEEK

"Words" Between Husband and Wife

Matrimonial cruelty not involving physical violence has long been recognized by the courts, but it is often difficult to prove and such cases present difficult problems for magistrates.

How far words can be treated as amounting to cruelty was discussed in the Court of Appeal in the case of *Gollings* v. *Gollings* reported in *The Yorkshire Post* of July 12. The Court allowed an appeal from the decision of a commissioner who had granted the wife a decree on the ground of cruelty. In the course of his judgment, Hodson, L.J., said that the commissioner had granted the wife a decree solely on the ground that her husband had twice in 24 hours accused her on a sexual matter and made unkind reference to it on three other occasions. The husband had expressed regret but the commissioner held that the husband's accusations had caused injury to the wife's health. He found that the husband was honest in making the allegations though they were unsound. Hodson, L.J., observed that conversations between husbands and wives were matters upon which it was very dangerous for the Court to base charges of cruelty. The Courts should be slow to say that words of that kind used honestly by one spouse to the other were cruel, and he could not find justification for imputing cruelty in this case.

Sellers, L.J., said that normally to speak the truth and to say what one honestly believed to be true in a matter of common interest would not be condemned. Otherwise, free exchange of honest opinion between spouses would make matrimonial life hazardous.

Cruelty by Words

The Court did not lay down the principle that cruelty could in no circumstances be committed by words. *Rayden On Divorce*, seventh edn., at p. 123 states: "Threats of actual personal violence sometimes constitute cruelty (the Court does not wait to act until such threats are carried into effect), but not mere vulgar or even obscene abuse, or false accusations of adultery, incestuous adultery, or of unnatural practices, unless the persistence in such false charges gives rise to injury to health or reasonable apprehension of it." A number of authorities are cited.

In *Atkins* v. *Atkins* [1942] 2 All E.R. 637, it was held that nagging of such a kind and so constant that it endangers the health of the spouse on whom it is inflicted is cruelty.

The decision in *Gollings* v. *Gollings, supra,* emphasizes the need for careful consideration of the particular facts of each case where the only cruelty alleged consists of words.

Mistaken Identity

In these days of identification by finger-print impressions it must be very rarely that a previous conviction of serious crime is wrongly attributed. This makes noteworthy an unfortunate mistake that occurred in a magistrates' court recently and was reported in more than one newspaper.

A man who admitted a charge of stealing a small quantity of coke was stated by the police to have been sentenced on a previous occasion to 12 months for forgery. The defendant, it is stated, was so overcome by this allegation that he collapsed. He denied the conviction and pointed out a discrepancy between the age of the man referred to by the police and his own age, adding that he had never been sent to prison and never lived at the address mentioned by the police.

After inquiry a police officer told the court that the police were satisfied that there had been a genuine mistake and that the defendant had not been previously convicted. The description on the record form agreed with that of the defendant as to the colour of hair and eyes, and his build. The defendant was conditionally discharged, the chairman of the bench expressing regret about the mistake.

It certainly was a matter for regret and will provide a warning against any failure to make careful checks before alleging previous convictions. There was little danger that the defendant would suffer any punishment on the basis of a previous record, because no court would act on a mere statement made without formal proof when the

matter is in dispute. There would be an adjournment for proof of identity, and in its absence the allegation would be ignored.

Four Times on Probation

We read recently of a case in which a youth who admitted a charge of stealing was said to have been placed on probation three times in the past four years, and each time to have committed an offence while on probation. He asked for another chance and was put on probation for another two years to continue training already begun.

The chairman said the magistrates were taking an unusual course. We offer no criticism of the decision, but merely wish to emphasize what the chairman said. It is, and ought to be, a rare occurrence for anyone, even a juvenile or an adolescent, to have four chances on probation within a few years. Repeated failures on probation generally point to the need for some more drastic treatment. Moreover, the offender must have been told on each occasion that if he offended again while on probation he would be liable to punishment for both the new offence and the earlier one, and the effect on him of not being punished could easily be to make him think the court was not treating his offences seriously. There is also the question of the possible effect on other young people who may come to believe that the courts will always be lenient with them.

This case is obviously quite exceptional and it is no ground for assuming that the magistrates concerned are prone to a policy of undue leniency.

Two Wrongs Don't Make a Right

It is a common defence in motoring cases to seek to show that it was the other driver who was at fault and that the police were wrong in selecting the defendant as the one to be prosecuted. Courts may often think, as they hear the evidence, that the proper decision would have been to prosecute both drivers, but they have also to realize, in trying the one who is before them, that the fact that the other one may also have been at fault does not excuse any offence which the defendant before them is shown by the evidence to have committed.

The Birmingham Post of July 8 reports a case in which both drivers were prosecuted, and found guilty. A van driver was charged with dangerous driving when he overtook a bus at a pedestrian crossing and knocked down a boy who was using the crossing. He was fined £20 and ordered to pay costs in addition. He was wrong, of course, in overtaking at a pedestrian crossing (*see* the *Highway Code*, p. 7, para. 29), and he was unable, because he did this, to stop when the boy first came into his line of vision.

The bus driver was also summoned. His offence was that of stopping between the "approach studs" and the crossing. He had received the bell to stop for a passenger to alight after the bus stop had been passed and he then stopped, improperly, with the front wheels of his bus on the crossing. After he had done this the boy began to cross and it was at this stage that the van, overtaking the bus, hit the boy. But the fact that the bus driver had stopped his vehicle improperly as he had was no excuse for the van driver. For all he knew the bus had stopped where it did because someone was then on the crossing and his only safe and proper course was to stop at the crossing.

The Highway Code and Speed

A great deal is said and written about speed as a factor in road accidents but we think that the problem is covered to a large extent by the advice given in the Highway Code which is quoted in the March, 1958, Road Safety *Bulletin* of the Derbyshire constabulary as follows: "*Never* drive at such a speed that you cannot pull up well within the distance you can see to be clear. *Always* leave enough room in which to stop. At night always drive well within the limit of your lights."

This advice is just plain commonsense, but how often on the road one sees it ignored and chances taken which come off, quite frequently, because some other driver is exercising that extra care which gives him a margin to allow for the misdeeds of others. Courts would do well to bear this advice in mind in trying cases of dangerous or careless driving. How many drivers who are involved in a collision would find difficulty in explaining how the collision could have occurred if they had been regulating their speed as advised by the Highway Code? One bad habit which can never be justified is that of driving at speed so closely behind another vehicle that if that vehicle has to make any sort of emergency stop the following vehicle has difficulty in avoiding a collision. When this is combined with a failure fully to concentrate on one's driving the danger is considerably increased. There is some point in the notices carried by some drivers "If you can read this you are too close."

The Independent Witness

It is the duty of all law-abiding citizens to assist to the best of their ability in the maintenance of law and order and one way in which they are commonly called upon to do this is by coming forward as witnesses in cases in which they happen to have been present when something material has occurred which has been seen or heard by them. Where they have an interest of some kind in the result of the proceedings there is usually no difficulty in getting them to volunteer to give evidence, but where they have no such interest they are not always so willing. Particularly in traffic cases difficulty is often experienced in getting really independent witnesses; people fear that they may have to spend a good deal of time in attending the court, they do not relish the possibility of being cross-examined, it may be with some severity, and they prefer, in consequence, not to have seen or heard anything.

Although, therefore, it is the good citizen's duty to come forward as a witness when he is able to do so we think that there is justification for the course adopted by the chairman of a bench who recently said to an independent witness in a two-car collision case "the trouble is that people usually get as far away as possible when they see an accident and the bench is grateful to you, an independent witness, for giving up your time to come here and give valuable evidence." Thanks publicly expressed in this way are probably much appreciated by the person to whom they are given. The report on which we rely in this case is in the *East Anglian Daily Times* of July 11.

Road Accidents in Essex in 1957

In this publication, the chief constable of Essex is able to record a decrease of nearly 1,000 accidents compared with the number in 1956, but it has to be remembered that up to April, 1957, petrol was rationed because of the Suez crisis. He calls attention to figures, given in the booklet, which show the number of accidents in which learner-drivers were involved, and he relies on them as demonstrating the value of requiring that a learner be accompanied by a competent driver. This requirement was relaxed while

petrol was rationed and was not re-imposed fully until the end of the year. In 1956 learner-drivers of cars and other four-wheeled vehicles were held responsible for 234 accidents. In 1957 the number was 679. For motor cycles without pillion passengers the comparable figures were 274 and 365; for those with passengers 31 and 49 and for "combinations" 16 and 20. In considering these figures and the conclusion to be drawn from them one has to bear in mind that solo motor cyclists, who cannot be required to be accompanied by a competent driver, showed some increase although nothing like so large an increase as did the four wheel vehicle drivers.

Other figures show that of the estimated population of Essex (992,200) 6,630 were killed or injured during 1957, *i.e.*, almost one in 150. Throughout the year in that county accidents occurred at the rate of one every 41·35 minutes. In 1955, 56 and 57, the peak period for accidents was from 5 *p.m.* to 6 *p.m.* and the peak day was Saturday, followed by Friday. The total number of accidents, including damage only accidents, was 12,710.

In the booklet are published photographs illustrating various "sins" by different road users, and there is one of an appalling crash in which four cars appear to have been involved, although it is such a smash that it is difficult to be sure whether there are four or only three. We do not know how wide a circulation this publication has, but we hope that many members of the public will see it and study the figures with some care. If they do they must surely pause and reflect, and one hopes that their conduct on the road will be affected accordingly.

A Police Officer on Sentences

"Lamentably poor" was the reply given by a chief inspector of police when asked by Surbiton Rotarians what he thought of the deterrent effect on criminals supplied by judges and magistrates. So states a report in *The Surrey Comet* of July 12, and it goes on to say that he declared "the courts have been bitten by the psychological bug to such an extent that they want to give people brought before them money out of the poor box instead of bringing home to them the seriousness of their crimes." The juvenile courts he described as ridiculously lenient. Old lags, he said, laughed up their sleeves because the penalties imposed were not sufficiently severe either in law or in its interpretation.

The police are naturally interested in the attitude of the courts towards crime and are entitled to form their own views upon it. This particular expression of opinion, as reported, strikes us as too much of a generalization and hardly in keeping with the facts. We see no ground for supposing that "old lags" are laughing up their sleeves, when we read of many of them being sentenced to preventive detention or long terms of imprisonment. That the aspect of deterrents in punishment is not always sufficiently regarded is true enough, and the Lord Chief Justice has called attention to it, but it is not, in our opinion, so generally overlooked, as to justify quite such a sweeping criticism as the chief inspector is reported to have uttered. The public may accept it on the ground that a police officer of high rank must know, but after all this is only a personal opinion and may not be generally held by police officers, to say nothing of people in other walks of life whose views also are founded on experience and study.

Care of the Elderly—Scottish Suggestions

The Department of Health for Scotland has issued to local authorities and hospital bodies in Scotland a memorandum on the care of the elderly in a form which it would be very useful if the Ministry of Health would take similar action in this country. Accompanying the memorandum is a circular pointing out that since so much depends on knowledge of the services available and on mutual understanding between those engaged in providing them, the local authority might consider whether they could with advantage make more widely known the availability of the various services and the relationship between them. A few local authorities in England and Wales have already done this on their own initiative and it is to be hoped that others will do so.

The aim of the Scottish memorandum is to give a brief account of the services required for the adequate care of the elderly and it attempts to sum up present experience. It is emphasized that old people prefer to live their lives in their own way and that only those who cannot do without the care and attention of a welfare home should go there. Special reference is made to the importance of properly cooked meals and the various ways of helping in this way are mentioned. The value of "Meals on Wheels" is stressed and it is stated that the National Assistance Board may be prepared to assist financially in appropriate individual cases where the old person has incurred extra expense. The National Corporation for the Care of Old People is at present sponsoring an inquiry into meals services for old people in this country and it is to be hoped that one outcome of that inquiry will be a greater activity of local authorities in helping in this matter.

The Scottish memorandum also draws attention to other voluntary and local authority services for old people such as clubs, visitation and domiciliary services generally. It is suggested that health visitors can help the elderly in various ways. Laundering is another problem which can be assisted by local authorities.

In co-operation with the Regional Hospital Board two local authorities in Scotland have provided health clinics to which general practitioners can refer elderly patients who have troubles which might lead to ill-health. The aim is to provide a place where people getting on in years can go for consultation. These clinics provide chiropody and physiotherapy as part of their regular service and it is a pity there are not yet any in this country.

Turning to old peoples' homes it is suggested that too little responsibility and too much regimentation seem to be the main things to be avoided and useful suggestions are made of ways in which the residents can be helped to develop a common interest in the home.

Cost of Private Street Works

The large bills for private street works falling on certain owner-occupiers have been headlined in the press and discussed recently in Parliament. Cases are quoted of a woman in Carlisle who built a bungalow for £750 in 1930 and was now faced with a charge of £500 for the flankage, and a press report stated that in Petts Wood there is a bus driver who owes £900.

In the House in May last the Parliamentary Secretary to the Ministry of Housing and Local Government (Mr. J. R. Bevins) said that he thought it was difficult to visualize a fair alternative to the present basis, that is an alternative which would take account both of payments already made and the increased value which would accrue to property owners if the liability were in future to be discharged by the local authority. The Government view, he

went on, is that no fundamental change should be made but that there is scope for improving the method of implementing these liabilities, especially in cases where a real hardship is evident.

This matter has been much in the minds of local authorities for many years and numerous councils have long since put into effect decisions which had the effect of doing what Mr. Bevins suggests should now be done.

The hardship to the flank frontager may be mitigated by apportioning on the degree of benefit basis but because of the practical difficulties of this method a number of local authorities have obtained Local Act powers extending s. 15 of the Private Street Works Act, 1892, and giving them powers to make special contributions to the amounts apportioned to flank frontages.

The hardship which would otherwise be suffered by the owner-occupier of small resources can be, and is, alleviated by allowing repayment over long periods, or in exceptional cases of old age pensioners and others with small fixed incomes arrangements are often made for nominal payments only during the owner's lifetime or until there is a change of ownership.

We agree with Mr. Bevins that when the question of general contribution from the rates to all properties is under review it is well to remember the advantages of private street works to the owner: for example the making up of a side road may enable part of the garden of the property affected to be sold as a building plot.

Another objection to rate fund contributions which has been raised in the past arises from the varying responsibilities for private street works in counties. Urban districts who have required owner-occupiers in their own areas to pay charges apportioned on them have objected successfully to proposals to make contributions out of county rate funds to the cost of private street works in rural areas.

Administered in the way outlined we do not think the present law is the cause of hardship.

AN OFFENCE HAS BEEN COMMITTED

By ROY H. WEEKS

Actus non facit reum, nisi mens sit rea is the Common Law principle which says " that a person cannot be convicted and punished in a proceeding of a criminal nature unless it can be shown that he had a guilty mind." We are not here considering the cases in which this principle does not apply, a recent illustration of which is to be found in *Hill* v. *Baxter* [1958] 1 A.E.R. 193. For a court to be satisfied that an offence has been committed, not only must the mental element be present but also proof that the accused has committed the other acts which go to make the offence. In most offences the common law or the statute requires that the offence shall have been committed in some particular state of mind, for example, " wilfully," " knowingly," " fraudulently," etc. And, of course, the law has not overlooked the question of competency, so as to provide for age, sanity, and the possibility of coercion. Where the alleged offence arises from a particular act of the accused it may be either voluntary, *i.e.*, arising from a deliberate conception in his mind, or it may be involuntary, *i.e.*, when his mind is incapable of conceiving anything at all.

It seems, therefore, that this is the point from which it is necessary to start if we are considering whether or not an offence has been committed, and this is the question frequently occurring in magistrates' courts when the provisions of s. 26 of the Magistrates' Courts Act, 1952, are applied in a criminal proceeding. This section creates the power to remand for a medical examination if the court " is satisfied that the offence has been committed by the accused " . . . " before the method of dealing with him is determined . . ." It is a widely used section and those familiar with it might be mildly interested to discover that the wording can give rise to the argument that being " satisfied that the offence has been committed " must mean that the court is justified at that point to convict, if it so desires. To convict a person, the court must be satisfied that the necessary mental element was present in the mind of the accused or may presume, unless the contrary is proved, that the accused was accountable for his actions. In a footnote to the section in *Stone*, 90th edn., is to be found " This may be at any time after a plea of guilty or at the point of conviction: it is not sufficient merely that a *prima facie* case is established." This would seem to indicate that the learned editors accept a situation between establishing a *prima facie* case and actually convicting. Where the demarcation line is remains enshrouded, but if guidance is sought from the common law, then, perhaps, it is not unreasonable to accept that " being satisfied that the offence has been committed " means that the court has reached the point of conviction, and if this point is reached, the court is satisfied that the accused had the necessary *mens rea*. It is further argued that because the section uses the phrase " before the method of dealing with him is determined " and not " before convicting him," the point of sentence has been reached.

In a magistrates' court if the accused is unfit to plead or give his consent to summary trial for an indictable offence then he would have to be committed for trial to quarter sessions or Assizes. In other cases a reception order might be made. Justices have no power, as a jury has, to deal with the question of insanity according to the M'Naghten Rules. A jury deal with such a question and if they find that the accused did the act but was insane at the time he committed it, they must return a special verdict to that effect. The court may then make an order for the detention of the accused during Her Majesty's pleasure.

Although the matter of insanity, as such, cannot be specifically pleaded before magistrates' courts, it frequently arises that justices are faced with the question of whether the accused was suffering from such a derangement of mind as to affect his knowledge of right and wrong in respect of the act with which he is charged. It is on occasions like this that the provisions of s. 26 are invoked and it is then arguable as to whether the court is justified in remanding merely to establish the state of the mind of the accused at the time of the offence before deciding whether or not to convict him. Clearly, it is most desirable where the court has doubt about the mental condition of the accused, that he should be remanded in order that a medical report or medical evidence may be obtained, so that if he is certifiable as being of unsound mind or mentally defective, and no question of committal for trial arises, he can be dealt with under the Lunacy Acts or the Mental Deficiency Acts, or under s. 30 of the Magistrates' Courts Act. But if s. 26 is taken as meaning

that the accused is convicted, then, if there is doubt about his ability in connexion with the *mens rea*, can the argument be accepted that he should be dismissed or, failing this, merely remanded for eight days? Doubt as to the mental state of the accused might be apparent as soon as he appears in the dock or it might arise after he has consented to be tried summarily or after he has pleaded "not guilty."

These are matters which can arise at any time. Take, for example, a case where the accused is a man of 70 charged with "Wilfully, openly, lewdly, and obscenely exposing his person with intent to insult a female . . ." A plea of "not guilty" is advanced and there is nothing to indicate from the demeanour of the accused other than that he is an old man who appears to be quite ashamed of the position he is in and no indication at all as to his mental condition. The prosecution witnesses are not challenged by the defence. The advocate for the accused emphasizes that they are not disputing the facts but were saying that although the accused did the acts about which there is complaint, he was not aware of what he was doing at that time: that his mental condition with such that he was incapable of forming the intention necessary for the charge to succeed. A doctor, specializing in diseases of the mind, is called by the defence and tells the court that the accused was in an advanced state of senile decay and that his actions would be automatic without any appreciation that what he was doing was insulting or wrong, but that his state was not such as to justify certifying him as a person of unsound mind. Furthermore, his condition might be worsened if he were incarcerated in prison or some other establishment. In circumstances such as this, it would not be unusual for the court to feel that they could not accept the situation as put to them by the defence. Here was an old man who was obviously in need of some treatment or restraint, both of which the court could only secure on conviction, unless they found him to be of unsound mind within the provisions of s. 30 of the Magistrates' Courts Act or the Lunacy Acts. The court, therefore, requires a second opinion on the state of the accused's mind and decides to remand him for three weeks pursuant to s. 26. The court does not make any pronouncement about conviction. The defence then takes the line that if the court purports to remand under s. 26 it must be satisfied that the accused committed the offence which is tantamount to convicting him, and it was not until the court was in this state of reasoning that there was power to use s. 26. If the court was in doubt about this then the accused was entitled to that doubt and should be acquitted. On the basis of the footnote in *Stone*, the learned editors have included the statement "This conviction cannot be reached until the criminal intention is taken as being present. Further, that in s. 30 of the Magistrates' Courts Act, 1952, which might very well be used after hearing medical evidence, there are to be found the words . . . "the court is satisfied that he did the act or made the omission charged . . ." and in the footnote to the section in *Stone*, the learned editors have included the statement "This requires proof of the act, but something less than the degree of proof necessary for a conviction: it could be, *e.g.*, that a doubt exists whether the accused's state of mind is such that he is capable of *mens rea*." Clearly, Parliament, in the wording of the two sections, intended a distinction to be made between "satisfied the offence has been committed" and "satisfied that he did the act or omission charged." If s. 26 could be interpreted as meaning something less than convicting, why was the section worded so differently from s. 30 and also s. 8 of the Mental Deficiency Act, 1913, which says, *inter alia*, ". . . the court, if it finds the charge is proved, may give such directions or make such order . . . without proceeding to a conviction, and such a person shall for the purposes of this Act be deemed to be a person found guilty of an offence."

This might be a proposition before any magistrates' court and quite an interesting one. However, a closer look at the Magistrates' Courts Act, illustrates what the intention is behind the sections dealing with the question of remands. Section 14 of the Magistrates' Courts Act, 1952, creates a general power to adjourn and subs. (3) provides that *after* convicting the accused he may be remanded for a period not exceeding three weeks for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case. *Boaks* v. *Reece* (1956) 120 J.P. 414 is a fairly recent case when this section was explained to the extent that it may be used to remand *after* conviction for a report on the mental and physical condition of the accused, in addition to the power contained in s. 26, although it is not suggested on this ground that s. 26 can only be used before conviction. The distinction between the sections, apart from the obvious extension of the principle of remand for medical report to be found in s. 26, is that s. 26 is limited to offences punishable with imprisonment, whereas s. 14 is not so limited. Also, s. 26 is mandatory ". . . the court shall adjourn . . . whereas s. 14 is discretionary. It will be noticed that in s. 105 of the Magistrates' Courts Act, the proviso to subs. (4) expressly excludes remands under s. 26 and s. 14 (3) from the limitation that *before* conviction a remand shall not exceed eight clear days. This then is another indication that the legislature intended to provide magistrates' courts with the machinery necessary to overcome the obvious difficulty which arises at common law on the question of *mens rea*. Otherwise, how would s. 30 of the Magistrates' Courts Act, come into use? This section provides that in the same classes of cases to which s. 26 applies, *i.e.*, offences punishable with imprisonment, the court may make a reception order for the detention of the accused in a mental institution, if it is satisfied that he did the act or made the omission charged, and there is evidence from two medical practitioners that he *is* of unsound mind, and a proper person to be detained. The use of "is" instead of "was" might be an indication that at this point the court is not exercising its powers as a criminal court deciding questions of *mens rea*, but is dealing with the matter as being ancillary to their powers as judicial authority under the Lunacy Acts. Similar reasoning might be applied when considering s. 26, although obviously it has wider scope than this because it might also be used as a pre-requisite to the making of a probation order with a requirement for mental treatment, in which event there would need to be a conviction.

If s. 26 were to be interpreted as meaning that a remand could only be made on conviction, a great number of the cases for which it is designed would have to be dealt with under the eight day rule, whereas clearly it is intended to provide the means to remand a person, before actually convicting him in the full criminal sense, for a period not exceeding three weeks to allow adequate time for the inquiry into his mental and physical condition as a preliminary step to either dismissing the charge, or convicting him and sentencing him, or to the making of a probation order, or to the making of a reception order, or, if the circumstances require it, to committing him for trial. The statute has created a special power which has been made manifest by use of the phrase "is satisfied that the offence has been committed" and not, as appears in s. 14 "after convicting."

LOCAL AND OTHER LEGISLATION

We noticed at p. 364, *ante*, the discussion which took place in the House of Lords on the day before Parliament rose for Whitsuntide, upon a motion by the chairman of committees on the subject of county council Bills conferring powers on local authorities within the county. Of these a Kent Bill was the longest, and the main topic of discussion. We propose in this article to examine more fully the problems raised by such a Bill. It was unfortunate that the argument developed largely upon party lines. The Government spokesman supported the Lord Chairman, and so did the leader of the Liberal peers, while most of the Labour peers who spoke, headed by Lord Atlee, resisted the motion. It is true that one Conservative spoke against it—Lord Cranbrook, formerly chairman of a county council, and it is noteworthy that from the Labour side Lord Milner of Leeds, a former chairman of committees in the House of Commons agreed in principle with the motion, although he complained that it had not been brought forward earlier in the session. There is substance in this complaint, for the Bills were deposited last year. We do not, however, see any ground for the suggestion made in the debate that this was a grave attack on local government.

On the Conservative side too much stress, perhaps, was laid on the difference which the Bill would make, especially in the criminal law, between one county and another. A local legislation Bill necessarily alters the law; to that extent Parliament has departed for generations from the principle of equality before the law. It has paid lip service to the principle enunciated by Lord Swinton, in course of the debate, that the law should be only altered locally upon proof of local need, but common form clauses have long been accepted without that proof. Indeed many of the "standard clauses" set out as requiring proof of need, in the report of a "committee on common form clauses" appointed between the wars by the Chairman of Ways and Means, have come to be accepted without proof, upon purely formal evidence. Moreover, while the possibility of local Bills has been recognized for centuries, their promotion was facilitated and regularized deliberately by the Local Government Act, 1933.

Nevertheless, the main pattern of local legislation has remained in theory, that Parliament would only give exceptional powers to a local authority for good cause shown, and the promotion of local legislation Bills by county councils, conferring powers upon all local authorities within the county, is hard to reconcile with the general principle. Precedents for this existed between the wars in Bills promoted by the London county council, and it probably did not strike anyone at first that there was much to be said against conferring powers, differing from those of the general law, upon all local authorities in a county such as Middlesex, with mainly homogeneous conditions, not differing greatly from conditions found in London.

It is also true that such Bills were at first regarded primarily from the point of view of the local authorities who would gain powers. It is easy to forget that power conferred on a local authority commonly means an obligation or disability imposed on someone else; this may be only on the ratepayer who has to find money for the local authority to exercise the power, but it may also mean the creation of new criminal offences. The Lord Chairman's speech stressed the latter point. It would be possible to make a debating point by way of answer, that local legislation has already produced local crimes and local variations in the punishment of crime, and that something will have been gained if this is made uniform throughout a county. Lord Attlee made the point, by reference to licensing restrictions upon the supply of liquor. It is, indeed, no more shocking that an act or omission which is innocent in Sussex should be an offence against the law of Kent than it is to find the same discrepancy between two adjacent boroughs or two districts within a county, merely because the council of one of them has had the energy (and the resources) to promote a local legislation Bill. Further, it is true to say that discrepancies in criminal law on the two sides of an artificial boundary do not always have the explicit authority of Parliament: quite apart from local legislation creating statutory offences, they are the necessary result of byelaw making powers.

A more substantial ground for criticizing these county council Bills is that conditions vary within most counties, and the parliamentary committee considering the Bill cannot therefore weigh the needs of all the districts to which new powers will apply. The county council will no doubt have ascertained that some of the local authorities in the county want some of the powers which the Bill proposes, but others may not do so.

Even where the local authority is known to want the powers, they will be conferred without going through the procedure, which since the Borough Funds Act, 1872, has applied to Bills promoted by the councils of boroughs and by urban district councils and their respective predecessors: *see* our remarks on this at p. 262, *ante*. If any one of the boroughs or urban districts in the administrative county had desired the powers which would be obtained by the county council Bill, it would have been necessary to go through the formalities prescribed by Parliament which in those places give local government electors, and persons who would be affected by legislative proposals, an opportunity to make their wishes known in advance. It should not be forgotten that promotion of a county council Bill deprives the electorate (in a borough and urban district) of one of the few relics of an older freedom, which is so commonly alleged to be enshrined in local government, and, turning from the borough and the urban district to the rural district, it is difficult to see how the inhabitants can have any effective opportunity of making their wishes known, upon the question whether a Bill applying to their district ought to be promoted by the county council.

We have mentioned above that Parliament has admitted in London that local authority powers can be given by a county council Bill, but London is peculiar, as has been recognized for more than a century in statutes relating to police, to building, and to methods of finance. A leading article in *The Times* of May 23, criticizing the decision upon the Lord Chairman's motion, invokes the London precedent, but unconsciously destroys the force of the analogy by stating "that 228 clauses (out of 442) would confer powers upon local authorities other than the county council." The writer goes on to say that the Kent county council's Bill would confer 16 new powers upon 251 parish councils. Why (the leader writer asks) should a parish council not be enabled to provide life-saving equipment on a river or the seashore?

This is special pleading in the derogatory sense of that expression. The county of Kent is not governed entirely

by parish councils, and nearly all the powers in the Bill would be given to town and district councils. If parish councils only had been in the picture, the conferring of powers to be exercised at their option might matter less, because they are close to the electorate, their spending capacity is limited, and they are unlikely to spend the money of their ratepayers against the wishes of the local public. The serious aspect of this sort of Bill (and others, but especially of the omnibus Bills of county councils) is that not only do all powers involve the spending of other people's money, but (more important) they involve intefering with the lives of ordinary people. This interference is always claimed by its advocates to be justified, either in the general interest of the inhabitants of the area or in the interest of the persons against whom powers are to be exercised for their own good. It can be conceded that this claim is often true, and that many such powers which began by precedents in local Acts, and have since been embodied in general legislation, have done more good than harm—practically the whole of the Public Health Acts came into existence in this way. It cannot, however, be postulated of every section in a local Act that it will prove beneficent, or even if it does that the experiment ought to be tried upon the people of one particular district in a county, when they have had no opportunity of expressing willingness to submit to the experiment. When the powers are given to a local authority by a county council Bill there is, first, no certainty even that the local authority wants to exercise the powers, and secondly no chance for the parliamentary committee charged with examination of the Bill to satisfy itself how each clause in the Bill will affect life and liberty in every district which will be affected.

In favour of the Bills which have now been held back by the House of Lords, and of other large Bills giving powers based on precedent, it is always argued that the process is necessary in order that local authorities may keep abreast of one another, in exercising powers which have already proved desirable. The necessity arises, so it is said, from the failure of nearly all Governments to introduce Bills making such powers general. The Public Health Act, 1925, was the last such Bill, and this is nearly 35 years old. There is force in this contention. A correspondent of *The Times*, making this point, names the Public Health Act, 1936, as another instance, but this was mainly a measure consolidating what was already in the general law. A Government Bill based on local legislation precedents saves local authorities the expense and waste of time involved in promoting local Bills for obtaining powers which can properly be given; it gives an opportunity of comparing the different form of precedents with the same general effect, and of re-drafting the clauses in the office of the Parliamentary Counsel.

Governments are, however, apt to be reluctant to include this sort of Bill in their legislative programme. That programme is usually crowded with measures which look more urgent, and measures which are more likely to win votes. This difficulty could be reduced, if the local government associations agreed among themselves upon a General Powers Bill, and arranged for some of their regular spokesmen in the House of Commons to put it into the ballot for private members' Bills. This has been done in recent sessions with several small Bills affecting local government, and there is no reason why it should not be done with a Bill of large scope. Once such a Bill was through committee it could reasonably be expected that the Government would find parliamentary time for its remaining stages. A Bill introduced into the House of Lords might be even better, but regard would have to be paid to the privileges of the House of Commons, where clauses involved expenditure. The complication thus arising is not insuperable.

We admit, in candour, that a Bill for a public general Act, conferring powers on local authorities and imposing corresponding disabilities on private persons, is open to one of the charges brought against a county council Bill doing the same thing—namely, that its provisions cannot be known in advance to, and agreed by, those affected. There is not even theoretical means of consulting those affected, as there is for local legislation which is subject to s. 255 of the Local Government Act, 1933, and sch. 9, repeating the effect of the Borough Funds Acts, 1872 and 1903. This is inherent, and is true of most general legislation. It is an objection which some people may argue is not serious, after so many of the previous general Acts have done the same thing, but such as it is it could be reduced if the clauses in such a Bill were classified carefully, and the machinery for putting sections in force was adjusted to the subject.

Thus a section which did no more than cure a defect in some previous enactment could be put in force everywhere by the Act itself. An example is s. 10 of the Local Government (Miscellaneous Provisions) Act, 1953. So could a second type of section, that which after it is in force necessarily involves public notices and recourse to courts or to a Minister, before any person can be adversely affected. An example of this is s. 76 of the Public Health Act, 1925. It might however be thought that a section like this fell into the next class we shall mention, because it involves cost to the ratepayers, even though no person individually can be adversely affected merely by its enactment.

A third class comprises sections which do not involve interference with persons or property, but do involve expenditure of the council's funds. The sort of power mentioned by *The Times* and already cited will serve as an example. The council might be required to give public notice before adopting such a section, although, if the powers of the section were otherwise harmless, we do not suggest that any other formality should be imposed.

There are, however, some provisions of a fourth class, which might well require public notice of adoption, followed by consent to the adoption by the appropriate Minister. These are sections which enable the local authority to interfere with selected classes of the community, such as those following a particular trade. It seems only right that traders and others affected should have the same sort of protection where the council wish to put in force this kind of adoptive provision in a statute, as they would have if the council proposed a byelaw affecting them.

Lastly, there is the type of enactment which enables the council to interfere, not so much with whole classes of the community (which are often organized for safeguarding their interests) as with individuals selected at the discretion of the council. A section of this sort might well be subject not to adoption merely but to an order of the appropriate Minister, putting it in force after public notice. In the Public Health Acts, 1875 and 1925, the Public Health Acts Amendment Acts, 1890 and 1907, there was some discrimination between sections. But this was more often on the now outmoded basis of urban or rural than on the basis of the content of a section and its effect upon those made subject to it. If the sections of a new public general Act giving powers to local authorities could be divided into some five classes or types, on the lines we have suggested, there would be little danger of injury to individuals, and the Act could include

most of the provisions commonly included in local legislation. This would relieve local authorities who really wanted extra powers from the expense of promoting local Bills, and the burden of proving to a parliamentary committee the need for some of the regular clauses. Such a general Act would also, so far as it went, get rid of the necessity for local legislation covering the same ground, and thus of the main objection to local legislation, which lies in the very fact of its being put locally into force without adequate opportunity for first determining how strong are the local reasons.

COMMONS AND SUCHLIKE

By A. S. WISDOM

A common is land subject to rights of common, which are rights "which one or more persons may have to take or use some portion of that which another man's soil naturally produces." A person entitled to exercise these rights is known as a "commoner" and rights of common include, *e.g.*, a right to take fish from waters on commons, or to take gravel or minerals to be utilized on the commoner's land, or to graze live-stock on commons.

Prior to the Inclosure Acts, commons were "enclosed" or taken over for agricultural purposes, often by agreement between the lord of the manor and the commoners. As enclosure became more general it was effected by local or private Acts, and Parliament passed a number of Inclosure Acts to standardize procedure for enclosing and regulating commons; these Acts are now known as the Inclosure Acts, 1845–1882. A number of other Acts also permitted enclosure. In later years public policy has hardened against inclosure except in appropriate cases.

Section 5 of the Metropolitan Commons Act, 1866, prohibits the enclosure of metropolitan commons. The Law of Property Act, 1925, ss. 193 and 194, forbid the erection of buildings or fences or the construction of works which prevent or impede access to any land subject to rights of common on January 1, 1926, without the consent of the Minister of Agriculture, Fisheries and Food. By sch. 1, para. 11 to the Acquisition of Land (Authorization Procedure) Act, 1946, where a compulsory purchase order relates to land forming part of a common, the order is to be subject to special parliamentary procedure unless the Minister of Agriculture grants a certificate on the terms therein required.

Commons may be regulated under a number of Acts:

Commons Act, 1899, part I enables the council of a county borough or county district to make a scheme for the regulation and management of any common within their district for expending money on the drainage, levelling and improvement thereof, and for making byelaws and regulations for the prevention of nuisances and the preservation of order. After giving appropriate public notice the council submit the draft scheme to the Minister of Agriculture, who considers any objections or representations and, if he thinks fit, directs an inquiry to be held. The Minister may approve the scheme with or without modifications, but if before approval he receives written notice of dissent from the lord of the manor or certain other specified persons the Minister cannot proceed further. The management of the common regulated by a scheme is vested in the council making the scheme and byelaws in pursuance of the scheme may be made under ss. 250–252 of the Local Government Act, 1933. The council may acquire the freehold or any estate or rights in the common.

Commons Act, 1876, part I. The council of a county borough or county district where any part of a common is within their area, and the council of a borough or urban district of more than 5,000 population according to the last census in respect of commons within six miles of the town, may apply to the Minister of Agriculture for a Provisional Order for the regulation or enclosure of such common. The procedure is more cumbersome than that available under the Commons Act, 1899. When vested with powers of management the council may be authorized to purchase the common and any common rights and, with the Minister's sanction, to undertake to contribute to the maintenance of recreation grounds, paths or roads or doing other things for the benefit of the neighbourhood.

Metropolitan Commons Acts, 1866–1898. A memorial may be presented to the Minister of Agriculture for a scheme to be prepared for the improvement, management and preservation as an open space in respect of commons within the metropolitan police area.

Law of Property Act, 1925, s. 193. Members of the public have rights of access for air and exercise to any land which is a metropolitan common, or manorial waste, or a common situate wholly or partly within a borough or urban district and to any land which on January 1, 1926, is subject to rights of common, subject to any Act, scheme or provisional order for the regulation of the land, and to any byelaws, regulation or order made thereunder. The Minister of Agriculture must on the application of the Lord of the Manor or any commoners impose limitations and conditions as to the exercise of the rights of access, or as to the extent of the land to be affected as in the Minister's opinion are necessary or desirable for preserving estates, interests or rights affecting the land.

In addition to common land, there are various pieces of land usually to be found in country areas, which are sometimes confused or thought to have some previous connexion with commons; these include:

Town and Village Greens. Neither of these terms has been defined although referred to in a number of statutes, *e.g.*, Commons Act, 1876, s. 29, Housing Act, 1957, s. 150 (4), and there appears to be no legal difference between the two terms. A "village green" is land in respect of which the local inhabitants have enjoyed from time immemorial a right of recreation or to play games thereon. The right must be specific and be confined to inhabitants of the locality.

Section 15 of the Inclosure Act, 1845, prohibits the enclosure of village greens. Any person wilfully damaging any fence on, or causing certain types of nuisance in respect of town and village greens may be proceeded against summarily under s. 12 of the Inclosure Act, 1857, and an encroachment thereon is a public nuisance under s. 29 of the Commons Act, 1876.

The holding or management of village greens, previously vested in the churchwardens and overseers of the parish, was transferred to the parish council or representative body where there was no parish council (Local Government Act, 1894. s. 6 (1) (*c*) (iii)). By s. 8 (1) (*d*) of that Act the parish council may exercise the powers of an urban district under s. 164 of the Public Health Act, 1875, and s. 44 of the Public

Health Acts Amendment Act, 1890, as to recreation grounds, including the power to make byelaws for regulating the village green. Occasionally, a village green may comprise land which has been allotted to the churchwardens and overseers of the parish for the purposes of recreation of the inhabitants. Such land is now vested in and managed by the parish council: Local Government Act, 1894, ss. 5 (2) (*c*) (now repealed), 6 (1) (*c*) (iii).

Roadside Waste. This is land forming part of the highway, but not being part of the highway as such. In early days when highways did not possess a solid surface or were out of repair, and particularly in bad weather, passengers and vehicles were obliged to pick more convenient routes alongside the highway. If an adjoining owner excluded the public from using his land adjoining the highway, he became legally liable to repair the road, and consequently when fencing his property along the highway the owner set back the fence so as to leave a strip for the public to use under such conditions. In course of time the strip was presumed to have been dedicated as part of the highway by user by the public. There is a legal presumption that the width of a highway covers all the space between the fences and that the public are entitled to use the entire highway and are not restricted to the metalled carriageway and footways thereof (if any); *R.* v. *United Kingdom Electric Telegraph Co. Ltd.* (1862) 26 J.P. 390, but this presumption may be rebutted by evidence to the contrary.

Manorial Waste. This is waste land vested or formerly vested in the lord of the manor where the commoners' rights (if any) have been acquired or become obsolete. It must be distinguished from other types of land under discussion; if for instance any rights of common existed in respect of the land on January 1, 1926, the land is a common within the meaning of s. 193 of the Law of Property Act, 1925. Former rights of common may have been abandoned and the land by prescription have subsequently become subject to rights of the inhabitants to use the land for recreation as in the case of a village green; in such a case it would appear that the land has become a village green and should be dealt with as such. If the land is in fact manorial waste, it should be treated as land in private ownership.

Fuel Allotments. These are defined by s. 8 (1) of the Acquisition of Land (Authorization Procedure) Act, 1946, as "any allotments set out as a fuel allotment under an Inclosure Act." Under various Inclosure Acts common land was allotted for the purposes of fuel allotments to permit poor persons to cut turf or peat for fuel. Common land so allotted under the Inclosure Act, 1845, was awarded to the churchwardens and overseers of the parish to be held on behalf of the poor or other inhabitants of the parish for a supply of fuel; such land is now vested in the parish council or representative body of the council and, in areas where there is no parish, in the borough or urban district council.

Field Gardens. These are defined under the Act of 1946 as "field garden allotments under an Inclosure Act." When common land was enclosed under the Inclosure Act, 1845, land was awarded as allotments for the use of poor persons in the parish. The management of field gardens allotted under the Act of 1845 is now vested in the parish council or representative body.

Allotments for Exercise and Recreation. Under s. 30 of the Inclosure Act, 1845, provision was made upon the enclosure of common land for the appropriation of allotments for purposes of exercise and recreation by the inhabitants of the parish and neighbourhood. These lands became vested in parish councils under the Local Government Act, 1894, which gave them the power to make byelaws for their regulation.

Allotments for the Poor. Under various Poor Relief Acts allotments were provided for poor parishioners and by s. 31 of the Inclosure Act, 1845, allotments for the labouring poor were required on the enclosure of waste land of any manor.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Devlin and Ashworth, JJ.)

PRICE *v.* HUMPHRIES

July 7, 1958

Magistrates—Institution of prosecution—Particular authority or consent required—Duty of clerk to justices and justice issuing summons—Position of prosecution when objection with regard to consent taken—When justices should allow case to be re-opened—National Insurance Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 67), *s.* 53 (1).

CASE STATED by Worcestershire justices.

An information was preferred at a magistrates' court by the appellant, Edward Price, charging the respondent, Michael Humphries, with an offence under the National Insurance Act, 1946. By s. 53 (1) of the Act: "Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Minister [of National Insurance] or by an inspector or other officer authorized in that behalf by special or general directions of the Minister." After evidence had been given on the facts, the respondent by his solicitor asked whether the case for the prosecution was closed, and, on receiving an affirmative answer, submitted that there was no case to answer as the prosecution had failed to prove that the proceedings were instituted in the manner required by s. 53. He further contended that, the case for the prosecution having been closed, evidence of the requisite consent or authority could not subsequently be admitted. The appellant contended that proof of such authority to prosecute was unnecessary except when required by the Court, and stated that it was available for production, if required. The justices were of opinion that the objection was good in law and that they ought not to allow the case for the prosecution to be re-opened, because no matter had arisen *ex improviso*. They, accordingly, dismissed the information, and the appellant appealed.

Held: that it was the duty of the clerk to the justices and the justice who issued the summons to see that s. 53 of the Act had been complied with; at the hearing there was no need for the prosecution to take any further step unless objection were taken; and, if objection were taken, the prosecution were bound to prove consent. With regard to the question whether the justices should have allowed the case to be re-opened, the governing consideration was whether the matter was one of substance or one of technicality, going only to procedure, in which case the justices should allow the case for the prosecution to be re-opened. The latter was the position in this case, and, therefore, the justices were wrong in dismissing the information and the appeal must be allowed, and the case remitted to them with a direction to proceed with the hearing.

Counsel: *Rodger Winn*, for the appellant. The respondent did not appear.

Solicitor: *Solicitor, Ministry of Pensions and National Insurance.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Slade and Devlin, JJ.)

STONE v. BOREHAM

July 3, 1958

Shop—Sunday trading—Mobile van used as shop—Shops Act, 1950 (14 *Geo.* 6, *c.* 28), *s.* 47, *s.* 74 (1).

CASE STATED by Suffolk justices.

At Woodbridge magistrates' court an information was preferred by the appellant, Stone, against the respondent, Keith Ramon Boreham, alleging that on November 10, 1957, at Woodbridge,

he, being a person carrying on retail trade or business at a certain place, being that part of Peterhouse Crescent, Woodbridge, situate outside No. 106, did not close the place for the serving of customers on that day, which was a Sunday, in that he sold a packet of tea contrary to ss. 47 and 58 of the Shops Act, 1950. The justices found that the respondent, a retailer, was the owner of a motor van equipped as a mobile shop and stocked with a variety of goods, including groceries and ice-cream for sale to members of the public. On Sunday, November 10, 1957, in the course of his trade or business, he drove the van slowly along Peterhouse Crescent stopping at frequent intervals. Soon after 4.30 *p.m.* he stopped in the roadway outside No. 106 and sold a packet of tea to a customer who stood in the roadway and was served from the van.

By s. 58 of the Shops Act, 1950, the provisions of s. 47 of the Act (which provides that every shop shall, save as otherwise provided, be closed for the serving of customers on Sunday) are extended "to any place where any retail trade or business is carried on as if that place were a shop. . . ." By s. 74 (1): "'shop' includes any premises where any retail trade or business is carried on."

The justices held that a "place" within the Acts must be akin to a shop and dismissed the information. The prosecutor appealed.

Held: that a moving vehicle was not within the Acts, and the justices had rightly decided the matter. The appeal, therefore, must be dismissed.

Counsel: *Boreham* and *Mark Dyer*, for the appellant; *Crespi*, for the respondent.

Solicitors: *Berrymans*, for *G. C. Lightfoot*, Ipswich; *Field, Roscoe & Co.*, for *Gotelee & Goldsmith*, Ipswich.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

OXFORDSHIRE PROBATION REPORT

Mr. Kenneth Thompson, principal probation officer for Oxfordshire, begins his 1957 report with a reference to the fact that probation is now 50 years old, and that the order constituting the combined area and probation committee was made in 1926. He acknowledges the debt of present day probation officers to their predecessors, the police court missionaries and to the early probation officers. The growth of probation is indicated by the fact that there were 68 cases under supervision at the end of 1930, compared with over 400 on December 31, 1957. In this connexion it must be remembered that the population of the county in 1931 was 209,784, and in 1957 it had risen to 299,300.

During 1957 there was an increase in the use of probation in most divisions, and there were 661 probationers in all compared with 566 in 1956. Of the 661 cases, 333 were adults and 328 juveniles. Of new cases during the year 164 were adults and 143 juveniles.

The practice of making a second probation order after some measure of failure on the part of the probationer seems to be rather on the increase. This report shows that 23 cases were so dealt with, and Mr. Thompson thinks that where there is a long history of anti-social behaviour or emotional disturbance, a breakdown is not altogether unexpected, and he finds it encouraging that the courts adopt an understanding attitude where extended tolerance and patience are necessary. He adds very sensibly, that where there is deliberate flouting of the law it is proper for the court to impose condign punishment and make the offender realize that this abuse of leniency is a serious matter. To this may be added the importance of making other probationers, and the general public realize what probation means.

The use of probation at Assizes and quarter sessions has met with encouraging results, especially in view of the fact that many of the probationers have bad records. One man had spent 30 years in prison. The success achieved may be in part connected with the increase in the number of cases in which committing magistrates have asked that a medical and mental report should be available to the higher court.

The question of case loads has engaged the attention of the probation committee and every effort is being made towards a target of 50 cases for men officers and 35 for the women. If these figures are a little lower than those adopted in some areas, it is necessary to look at them in the light of local conditions. Mr. Thompson points out that many cases call for extensive case work, and bearing in mind the amount of travelling and court attendance involved, suggests that these figures are reasonable, in present circumstances. It is also mentioned in this report that there has been an amazing increase in the number of home surroundings reports supplied to the justices. The figure for 1957 was 450, compared with 336 in the previous year.

After-care work now forms an important part of the work of probation officers. This report acknowledges with gratitude the willing help of the employment exchange, the National Assistance Board and other social agencies, and of families and landladies who are prepared to offer a home to those who are seeking a fresh start in life. There is also acknowledgement of the co-operation in matrimonial cases afforded by the Marriage Guidance Council, and by many solicitors in city and county who have referred clients in an attempt to mend their broken marriages.

In many instances people who bring their troubles to the probation officer have to be referred elsewhere, and in this connexion Mr. Thompson records his appreciation of the help given by the Women's Voluntary Service, the Citizens' Advice Bureau, the Soldiers' Sailors' and Airmen's Families' Association and the British Red Cross.

Probation officers like to see probationers from time to time in their own homes, but, says this report, evening visits are made difficult nowadays by television, which often makes it impossible to conduct a private interview. The answer has been found in arranging a number of report centres in various parts of the area.

The more the public knows about probation and the work of probation officers the better this end is furthered by discussions and lectures which generally excite interest and sympathy. Mr. Thompson has given up much of his spare time and addressed some 50 meetings during the year.

In 1933, a probation relief fund was inaugurated, it being recognized that "first aid" measures could not always be carried out at the expense of public funds. The work has continued ever since, thanks to the generous response from all the magistrates in the probation area. Instances are given which show the practical value of such a fund.

COUNTY BOROUGH OF ROCHDALE: CHIEF CONSTABLE'S REPORT FOR 1957

The report begins with a reference to the growth of the force in the 100 years of its existence since it came into being on April 13, 1857. At that time it was one of 236 separate police forces in this country. The number has now been reduced to 124. We regret that considerations of space prevent our referring to other comparisons between past and present.

On the strength of the force the chief constable says that "the struggle to reach full establishment (182) drags on year after year with but little improvement. During 1957 there was a net gain of four to give an actual strength on December 31 of 157. Sickness accounted for the loss of 2,320 days during the year, equivalent to the absence of 6·3 men from duty every day in the year. At one time during the influenza epidemic as many as 18 men were off duty at one time."

The cadets provide the bright spot so far as recruiting is concerned. They are up to their establishment of eight and there is a waiting list. Twenty have been enrolled since the cadet scheme began in 1951 and of these seven are still serving as cadets. Seven others are serving as constables, one is at a training school, two are doing national service and only three failed to join the force after national service.

The failure to reach full establishment makes it difficult to maintain on the beats as many men as the chief constable would wish. Police dogs and their handlers have done useful work in circumstances in which the tracking abilities of the dogs proved invaluable. The man-power shortage makes the waste of police time involved in investigating 2,548 cases of "insecure premises" and unusual lights all the more regrettable, and the public are urgently requested to take more care.

There were 977 recorded crimes, 15 fewer than in 1956, but there was a rather startling increase in shopbreakings, 70 more cases bringing the 1957 total to 220. Fortunately there were a number of "good arrests" of criminals engaged in such activities, followed by prison sentences, which the chief constable hopes will mean a decrease in this class of crime. One shopbreaker who was fined committed a further such offence soon afterwards, his declared object being to get money to pay his fine.

On juvenile crime the chief constable expresses the somewhat old-fashioned view, which is not necessarily wrong merely because it is old-fashioned, that the simple explanation why many youngsters steal is that "they want something they are not prepared to wait for until they can acquire it legitimately and they are not made sufficiently conscious of the social ostracism and personal inconvenience which will follow if they persist in such conduct."

Space does not permit us to deal with Rochdale's traffic problems, but they are still a major difficulty.

ROAD CASUALTIES — MAY, 1958

There were 4,393 more casualties on the roads of Great Britain in May this year than in May, 1957. The killed numbered 466, an increase of 21, and the seriously injured 6,248, an increase of 1,025. The number of slightly injured rose by 3,347 to 20,947, making a total for all casualties of 27,661, an increase of nearly one-fifth.

Over the country as a whole the Road Research Laboratory estimate that traffic on main roads increased by 25 *per cent.* compared with May, 1957.

The casualty increase was particularly marked in the Metropolitan Police district where the figures for killed and injured rose by 30 *per cent.* from 4,989 in May, 1957, to 6,484 in May this year. The higher rate in the London area may be attributable in part to the high traffic volume of cars, motor cycles and cycles in use during the bus strike.

Figures for the four main classes of road users are given below with increases or decreases shown in brackets:—

	Killed	*Total* (Killed and Injured)
Pedestrians	186 (+ 14)	5,509 (+ 524)
Pedal cyclists	48 (+ 2)	5,776 (+ 1,020)
Motor cyclists and passengers	125 (− 2)	7,472 (+ 1,431)
Drivers of other vehicles and passengers	102 (+ 9)	8,649 (+ 1,439)

During the first five months of the year 2,143 persons were killed, 24,449 seriously injured and 79,464 slightly injured. The total of 106,056 is 13,408 more than in the same period of 1957 when petrol restrictions were in force until mid-May.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

JUVENILE COURTS

At question time in the Commons, Mr. B. Janner (Leicester, N.W.) asked the Secretary of State for the Home Department whether he was aware that, owing to the considerable increase in cases coming before the juvenile court in the London area, probation officers and other staff were seriously overworked; and what special steps he was taking to remedy the situation.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that he was aware that the steady increase in the business of the London juvenile courts in recent months had resulted in some over-burdening of the probation officers serving them, though he had not heard of serious overwork among other staff. He had appointed five temporary assistants pending recruitment of trained officers to the seven vacancies in the juvenile courts. Some of those vacancies would be filled from among eight men at present in training who would take up appointments in London in about three months' time, and he hoped to recruit other trained men and women before the end of the year. If the work of the courts continued at its present level, he would consider, when those vacancies were filled, whether additional appointments ought to be made.

Mr. Janner then asked whether the Secretary of State was aware that, at present, probation officers were overloaded with cases, and that the whole system in the juvenile courts would break down unless it was attended to. Further, was he aware that the staffs had to sit in the juvenile courts day after day until 7 or 8 o'clock in the evening, and that it was putting far too much pressure on them. What was he doing about that?

Mr. Butler said that they were trying to fill the immediate vacancies, and he was glad to say that an advertisement which had recently been put out for men to be trained for work in London had resulted in very considerable answers, so he did not think the work was regarded as either unsuitable or unattractive. He had looked at the case loads. Undoubtedly they were much heavier for the men than for the women at the present moment. The Home Department had that very much under review. It was all part of the burden of the general increase in crime which, in that case, was falling on the probation officers.

Mr. K. Younger (Grimsby): "In view of the importance of having adequate numbers and quality of staff, will the Home Secretary keep reminding himself of the dissatisfaction expressed in this House over his own decision on probation officers' pay?"

Mr. Butler: "Yes, Sir. That is ever present to my mind."

DRUNKENNESS AMONG YOUNG PEOPLE

Mr. C. J. Simmons (Brierley Hill) asked the Secretary of State whether the new research unit which he had set up in the Home Office to consider the problem of juvenile delinquency had been instructed to inquire into the considerable increase of youthful drunkenness, particularly with reference to the places and agencies in association with which young people obtained intoxicants and contracted drinking habits.

Mr. Butler replied that the Home Office Research Unit was at present fully occupied, mainly with studies relating to the treatment of offenders. He hoped, however, to arrange for an investigation into the increase in the number of convictions for drunkenness to be carried out by another body.

MAGISTERIAL LAW IN PRACTICE

Western Mail. May 23, 1958.

MAN WITH DOLLARS

Patrick Joseph McKeefery, aged 47, a cafeteria manager, of no fixed address, appeared at Bow Street, London, yesterday on a warrant under the Fugitive Offenders Act, accused of stealing 45,000 dollars in cash in the jurisdiction of the Government of Canada.

Detective-Inspector D. Malcleod said that he saw McKeefery at Uxbridge Magistrates' Court yesterday morning and told him about the warrant and that the alleged offence took place at Toronto.

McKeefery said: "I agree there is a charge against me and I have to face it. All I want is to get back to Canada and fight it out with the people who have brought this charge against me."

Legal aid

McKeefery asked the magistrate, Mr. H. R. Blundell, if he could have legal aid.

Inspector Malcleod said that he first saw McKeefery at London Airport last Sunday and he then had in his possession 39,190 Canadian dollars.

"We took all that money from him in view of the charge, so he has no money now," said the officer.

Mr. Blundell, remanding McKeefery in custody until May 29, said he could make application for legal aid at Brixton Prison during the remand.

This man was arrested on a provisional warrant issued under s. 3 of the Fugitive Offenders Act, 1881. A fugitive arrested on a provisional warrant may be from time to time remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant (s. 5). As to the jurisdiction and powers of the Bow Street magistrates under the Fugitive Offenders Act generally, *see* under "*Navy Officer fined* £36,500. *Gaoled*" (1956) J.P.N. 351, and under "*Five year delay 'not explained' says Lord Goddard*" (1956) J.P.N. 555.

In this case the fugitive defendant asked for legal aid. Under s. 5 of the Fugitive Offenders Act, 1881, the magistrate "shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction." In cases from foreign countries under the Extradition Acts "the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England" (s. 9, Extradition Act, 1870). Therefore, in cases coming before him either under the Extradition Act, 1870, or the Fugitive Offenders Act, 1881, a Bow Street magistrate has power to grant legal aid and to order the payment of costs under the Costs in Criminal Cases Act, 1952, just as he could in an ordinary indictable case. (*See Halsbury* (3rd edn.), p. 570 and p. 587.)

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

From Lady Brunner, J.P.

DEAR SIR,

On August 7, there comes into operation a law which makes it an offence deliberately to leave litter about, an offence for which a fine of up to £10 can be imposed. This is the latest step in the Anti-Litter Campaign and the result of the tenacious activity of Mr. Rupert M. Speir, M.P., in reintroducing the Private Bill for the Abatement of Litter, first sponsored by Mr. John Hill, M.P.

The habitual spoliation of town and countryside by thoughtless and, sometimes, wilful acts, is something which affects everyone, and I am writing to ask that all those in authority should support the new legislation and not allow it to fail, as have so many of the byelaws, for lack of enforcement. As we in the Keep Britain Tidy Group know, there is increasing concern up and down the country at this ugly and wasteful habit which costs us all so much, both aesthetically and financially, for we all contribute to the £11,000,000 per annum which the collection of the country's litter costs.

Changing what has become a national habit is a question of education, training and continual attention—a slow business, in which the new law has an important part to play. I appeal to those concerned to see that it helps to achieve the end we all so much desire, a town and countryside of which we need not be ashamed.

Yours faithfully,
ELIZABETH BRUNNER,
Chairman.

Keep Britain Tidy Group,
National Federation of Women's Institutes,
39 Eccleston Street, London, S.W.1.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Practical Point 10, p. 456, vol. 122, No. 28, dated Saturday, July 12, 1958.

Is it possible that the £25 referred to in this query is a printing error, because, as you will be aware, the figure should, I think you will agree, be £20.

Yours faithfully,
G. W. KAY BUTCHER.

Justices' Clerk's Office,
120 Main Street,
Bingley.

[We agree with our correspondent that the figure of £25 in the P.P. at p. 456, *ante*, is incorrect, but we cannot agree that it should be £20. There is no limit laid down in s. 51 except the lower limit of £5 which precludes justices from committing for trial. We assume our correspondent has chosen £20 because of the upper limit in s. 14 of the Criminal Justice Administration Act, 1914. His implication seems to be that any charge involving damage exceeding £5 but not exceeding £20 should be laid under s. 14. It is with this that we disagree since although it would be unfair always to expose a defendant in such a charge to the greater punishment available under s. 51, we think that there can be circumstances, *e.g.*, of aggravation or repetition, which would make the more serious charge the proper method of dealing with the case. The query, as we ought to have noticed at the time, should be corrected by exercising completely the phrase " malicious damage above £25."—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

With reference to the recent events in the north of Scotland, this is not the first time that a Russian has escaped or attempted to escape in the British Isles. Your issue of October 8, 1898, has an interesting article on the escaped Russian soldier at Dartmouth. Unfortunately the Russian of 60 years ago was recaptured and I do not know whether diplomatic representations were then made following the events in Devon.

Yours faithfully,
W. P. DOCKRAY.

Town Hall, Manchester.

PERSONALIA

APPOINTMENTS

Mr. William Alan Belcher Goss, recorder of Pontefract since May, 1957, has been appointed recorder of Doncaster.

Superintendent John Ronald Jones, of Mid-Wales constabulary, stationed at Newtown, has been appointed chief constable of Mid-Wales constabulary to succeed Captain Humphery C. Lloyd, who is retiring. Superintendent Jones, aged 48, a native of Carmarthenshire, joined the Metropolitan police in September, 1930, and transferred to the old Breconshire constabulary early in 1933. Until the end of March, 1948, he remained with the Breconshire force which was then merged with the Radnorshire and Montgomery forces to form the Mid-Wales constabulary. In March, 1949, he became sergeant and was transferred to Brynmawr. He became inspector in May, 1954, and superintendent in September, 1956, when he was transferred to Newtown and placed in charge of " A " division covering Montgomeryshire.

Mr. T. Hubert Lewis, formerly chief constable of Carmarthenshire, was appointed chief constable of the new combined force for Carmarthenshire and Cardiganshire, on the merger coming into force on July 1, last. Superintendent Nathaniel Davies, deputy chief constable of Carmarthenshire, is the new deputy chief constable of the combined forces.

Mr. P. E. Brodie, chief constable of the Stirling and Clackmannan police force, has been selected as chief constable of Warwickshire. When he received his present appointment he became one of the youngest chief constables in Britain. He succeeds Lieut.-Col. G. C. White, who has been appointed chief constable of Kent.

Miss I. M. Barrington has been appointed a probation officer in the London service from June 1, last. She served as a whole-time probation officer in Sheffield from October, 1949, to April, 1952, and in the Kent combined area from May, 1952, until her present appointment.

Miss E. W. Errington has been appointed a probation officer in the London service as from July 1, last. On completion of a short Home Office training course, she served as a whole-time probation officer in Portsmouth from November, 1942, to December, 1947, and in the Devon and Exeter combined area from January, 1948, until her present appointment.

Mr. E. S. Collins has recently been appointed registrar of the Regina Land Registration District, Saskatchewan, Canada. Before emigrating to Canada in November, 1957, Mr. Collins was assistant solicitor with Birmingham city council and was previously with Stevenage development corporation and Hornsey borough council. He qualified as a barrister and solicitor in Saskatchewan in June, last.

RETIREMENTS

Mr. Alexander Pickard is retiring from the position of town clerk of Bristol at the end of October. He was due for retirement a year ago but stayed on to be in office during the year of the Royal Show.

OBITUARY

Mr. Frederick Darlington Wardle, town clerk of Bath from 1904 until 1921, has died at the age of 91. He was in practice as a solicitor in Bath until his death.

Mr. Ralph Lionel Henry Hiscott, formerly town clerk of Colchester and deputy town clerk of Yeovil, has died.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Local Authority Financial Returns, 1955–56. Government of Northern Ireland. H.M.S.O. Price 13*s.* net.

Staples on Back Duty. Seventh edn. Percy F. Hughes. Gee & Co. (Publishers) Ltd. Price 27*s.* 6*d.* net.

Williams on Wills. Second Cumulative Supplement, 1958. Butterworth & Co. (Publishers) Ltd. Price 17*s.* 6*d.* net, 1*s.* postage. Combined price £7 7*s.*

ERRATUM

In the question posed to us at p. 491 P.P. 9, in what our correspondent set out as condition (*c*) we regret that an intrusive comma destroyed the sense of the question and answer. The condition, as set out in the question that we answered, was punctuated " Persons, other than residents and visitors taking a main meal thereat." We apologize.

FOOD FOR THOUGHT

"'You look a little shy; let me introduce you to that leg of mutton,' said the Red Queen. 'Alice—Mutton, Mutton, Alice.' The leg of mutton got up in the dish and made a little bow, and Alice returned the bow, not knowing whether to be frightened or amused. 'May I give you a slice?' she said. 'Certainly not!' the Red Queen said, very decidedly; 'it isn't etiquette to cut anyone you've been introduced to.'"

Shyness in the face of culinary innovations, and insistence on a proper introduction to strange dishes, is undoubtedly an English characteristic—though one would not expect it to be displayed before a plain roast joint. Much speculation has been devoted to the lack of enterprise in our native reaction to unfamiliar food. Is it a wariness in the English character, fostered in generations of schoolchildren by the type of history-book that used to record vitally important facts like the death of King So-and-So from a surfeit of lampreys (whatever they might be), and the drowning of the Duke of What-not in a butt of Malmsey wine? Or does it arise from that most unattractive shrub of English stock—the Puritanism implanted during the 11 miserable years of Commonwealth rule? Nobody can say for certain, but the monotony of our diet is a melancholy fact.

Yet, as a recent question in the Commons made plain, there still survives some local pride in and jealousy of the culinary traditions of certain localities. The M.P. for Truro has taken the Chairman of the Kitchen' Committee severely to task for permitting the cafeteria (dreadful word!) used by members to sell "Cornish Pasties" that allegedly bear no resemblance to those eaten in Cornwall—except in shape. If, protested the honourable member, the Kitchen Committee was going to sell a traditional dish under a traditional name, it should be made from a traditional recipe. The member for Falmouth dismissed the Westminster version of a Cornish Pasty as "a complete monstrosity." The chairman (who is said to be an expert on Indian cooking) promised to attend to these complaints.

There is, perhaps, some subtle connexion between this juicy titbit from Question Time and the recent prosecution of a motor-cyclist who rode along a Plymouth street, controlling his machine with his right hand and eating a pasty from his left. It was probably the first time, said the prosecutor, that a man had been accused of a driving offence as a result of eating a pasty; but the precedent has something to commend it, for the evidence showed that, every time he took a bite, his machine swung violently out into the centre of the busy road. "He who runs may read," but it does not follow that he who rides may eat at the same time.

M.P.s are rightly jealous of the reputation of their kitchen. Much regret was expressed, some years ago, when the chairman of the committee turned a cold shoulder to the suggestion that, to mark the Queen's homecoming from a tour abroad, the Commons dining-room should serve the traditional dish of maupygernon. This, we admit, was a new one on us until we learned, from an informative article in *The Daily Telegraph*, that it was popular in mediaeval times. "White meat or pork, pounded smooth, seasoned with white pepper or ginger, a suspicion of honey, and a little verjuice" is only the beginning. The description of the finished dish glows with all the picturesque imagery of a Chesterton, and recreates the *gourmet* atmosphere of Eric Linklater's *Poet's Pub*. The original recipe is grim and impressive—"Take a pygge, slay hym, smyte hym in pieces, and grynde hym to powder," Mediaeval cooks, it seems, were very thorough; no half-measures for them.

Recent attempts to make the Englishman food-conscious have included a double-column article in *The Times*, headed NEW MYSTERY IN EVOLUTION OF THE SAUSAGE, which quotes from Rabelais and goes on to allude scornfully to an ingredient "of which modern technical ingenuity can scarcely claim to be proud—'emulsified offal'." We have previously had occasion to refer, in this column, to the asides of the Lord Chief Justice on the composition of the sausage—a generic name for a product of ambiguous composition, covered by a multitude of skins. Now, it seems, the rot is spreading even into Caledonia stern and wild. Scottish dovecotes have been fluttered by a report that the Federal Health Department of the Canadian Government had banned shipments of haggis. Investigation was promised, but we have heard no more of this instance of Imperial Preference in reverse.

After such a threat it is not surprising to read that the Minister of Agriculture has been asked to look into the allegation that, because of the increasing use of chemical fertilizers, potatoes have begun to taste of mothballs. This is the sort of thing that *Punch* used to hint about the sandwiches sold in railway-station buffets which (it was suggested) were taken down from their shelves, dusted and varnished every other month.

However, the experience of other peoples who are greater epicures than ourselves is not so exceptionally encouraging, after all. Italian cooking still has its supreme exponents of a long and noble tradition; but in the sixteenth century it also had its Borgias. And Sweden, the land of streamlined comfort and high standards of living, its tables groaning with delicious *smörgaas*, seems to have had a bad patch at about the same time. Recent investigation of the remains of King Eric XIV, who died in 1577, has confirmed the suspicion that he had drunk a plate of pea-soup, poisoned (probably) by his brother John III, who had dethroned and imprisoned him in 1568. Eric had proposed marriage to several ladies of royal European family—including our own Elizabeth I—but always in vain. In the light of this belated *post mortem* their preference for plain native fare is at last fully explained.

A.L.P.

ADDITIONS TO COMMISSIONS

HASTINGS BOROUGH

Charles John Willmington Locock, 49 Grove Road, Hastings.
Mrs. Gwladys Elizabeth Montgomery, 4 The Green, St. Leonards-on-Sea.

HEREFORD CITY

Paul Eric Barnsley, D.S.O., 10 Overbury Road, Hereford.
Frederick Roy Whitworth Blackler, 65 Lichfield Avenue, Hereford.
Lt.-Col. William Denis Anthony Clare, M.B.E., T.D., 47 Penn Grove Road, Hereford.
Mrs. Kathleen Mary Ellson, 83 Widemarsh Street, Hereford.
Thomas Reginald Tidball, 30 Hinton Road, Hereford.

HOVE BOROUGH

Herbert George Baker, 47 Lawrence Road, Hove 3.
Cyril Alexander Clarke, 10 Portland Avenue, Hove 3.
Mrs. Emmie Elizabeth Kate Simmons, 7 Coombe Road, Steyning.

PORTSMOUTH CITY

Arthur George Asquith-Leeson, 11 Dolphin Court, Cranes-water Gardens, Southsea.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building Byelaws—*Failure to deposit plans—Penalty and remedy.*

My council are experiencing difficulty with builders who start building before depositing plans, as required by the council's building byelaws.

Although it is realized that if such work is found it may be inspected (though this in practice is not very satisfactory) there does not appear to be any drastic sanction which can be enforced, whereby either the work can be stopped until satisfactory plans are deposited or the builder forced to deposit plans immediately.

I should be obliged for your guidance and comment on the following points:

1. Can the council serve a notice under s. 65 (1) of the Public Health Act, 1936, only if the work itself contravenes the building byelaws?

2. Can the council serve a notice under s. 65 (2) of the Public Health Act, 1936, only if plans are required for the purposes of this Act? *i.e.*, the sections mentioned in note (*a*) on p. 2444 of *Lumley* (12th edn.).

3. If a builder fails to comply with either of the above notices and the council act in default under s. 65 (3) and there is found to be no actual contravention of the byelaws, will the council be liable in damages and to what extent?

4. Under the council's building byelaws (which are based on the model byelaws, 1953), and in particular byelaw 6 (2), the surveyor can require a builder who neglects or refuses to give notice of the commencement of building operations to cut into, lay open, or pull down so much of the work as is necessary in order that he may ascertain whether any of the byelaws have been contravened or not:

(*a*) If a builder does comply with such notice and no actual contravention of the building byelaws is found, will the council be liable in damages and to what extent?

(*b*) If a builder refuses to comply with such a notice, is the only sanction a £5 fine (the maximum fine allowed by s. 251 of the Local Government Act, 1933)?

(*c*) Is such a refusal a continuing offence, thus making the builder liable for a further fine not exceeding 40*s*. for each day it continues after conviction?

5. (*a*) If a builder refuses to deposit plans for byelaw purposes as required under the byelaws, is there any other sanction than that stated in 4 (*b*) above whereby he can be made to do so?

(*b*) Do you consider such refusal to be a continuing offence and so liable for a fine not exceeding 40*s*. for each day it continues?

6. If any notices are served under 1, 2, and 4 above are they registrable in the land charges registry and, if so, in which part?

DULOW.

Answer.

1. Yes; *see Lumley's* note (*b*) on the subsection.

2. Yes.

3. No; they act under subs. (3) for the purpose of finding out that which it is their duty to find out, a duty impeded by the builder's failure to deposit plans.

4. (*a*) No, on the same principle.

(*b*) Yes, but the council have also their power of entry under s. 287 of the Act.

(*c*) Yes, in our opinion.

5. (*a*) No; *see Lumley's* notes (*b*) on subs. (1) and (*c*) on subs. (2).

(*b*) We think not. The offence was committed once for all when he began building without having deposited plans. We have not forgotten *James* v. *Wyvill* (1884) 48 J.P. 725, but the penalty section then in force was s. 183 of the Public Health Act, 1875. We do not think it safe to rely on the decision for purposes of s. 251 of the Local Government Act, 1933.

6. No.

2.—Criminal Law—*Larceny—Restitution and compensation—Larceny Act*, 1916, *s.* 45—*Forfeiture Act*, 1870, *s.* 4.

A has his gold watch stolen by B. B sells the watch to C (an innocent purchaser within the meaning of the Act), who in turn sells it to D (another innocent purchaser).

If B is detected as the felon, and is arrested, and the watch is finally recovered from D, the watch must be restored to A (Larceny Act, 1916, s. 45), and the "innocent purchaser" may be reimbursed out of any money taken from B on his apprehension (Larceny Act, 1916, s. 45 (3)).

(*a*) As both C and D are innocent purchasers of the stolen property, which of them is entitled to reimbursement out of the money taken from B? (Bearing in mind that D is the only real loser.)

(*b*) If B has been *summoned* to court for the felony, how would C or D have been compensated?

(*c*) Would D be considered an "aggrieved person who had suffered loss of property as a result of the felony," and so be able to apply for compensation under the Forfeiture Act, 1870, s. 4?

GINCOL.

Answer.

(*a*) In the rather badly drafted s. 45 of the Larceny Act, 1916, we think "innocent purchaser" must mean an innocent purchaser who has suffered loss. If this is so, only D would be entitled to reimbursement out of money taken from B.

(*b*) Since s. 45 (3) of the Act presupposes the apprehension of the thief, we do not think that D can be compensated under that section if B has been summoned.

(*c*) In both cases (*a*) and (*b*) we think that D could be considered an "aggrieved person" and so able to apply for compensation under s. 4 of the Forfeiture Act, 1870.

We ought to add that if B is put on probation or absolutely or conditionally discharged, s. 11 of the Criminal Justice Act, 1948, would apply and that section appears to be wide enough to allow the court of its own motion to award compensation to any person it thinks has suffered loss.

3.—Elections—*Declaration of expenses where candidate withdraws.*

In view of the provisions of ss. 55, 58 and 103, of the Representation of the People Act, 1949, do you consider that (*a*) a candidate who withdraws his nomination within the prescribed time, or (*b*) a candidate whose nomination is declared invalid, is liable to make a return and declaration of election expenses, and that his name (or the name of any other person he may have appointed) must be included in the list of names and addresses of election agents published by the appropriate officer?

A.E.M.

Answer.

We think so—certainly as regards (*a*), and with less certainty as regards (*b*). A person may have been a candidate, as defined by s. 103 of the Act, for a time long enough for expenses to have been incurred by him or by his agent.

4.—Food and Drugs—*"Pure Dairy Ice-Cream"—Food Standards (Ice-Cream) Order*, 1953—*Use of word "Dairy."*

We act for a café proprietor who sells non-proprietary ice-cream and it is his desire to advertise the ice-cream as "Pure Dairy Ice-Cream."

If he does so advertise his ice-cream, are you aware of any legislation or regulations which stipulate that there must be a fixed or minimum cream content if the above wording is used by him, and in particular if the word "Dairy" is used. HALOM.

Answer.

The Food Standards (Ice-Cream) Order, 1953, prescribes a standard for ice-cream and it is an offence under art. 1 of the Food Standards (General Provisions) Order, 1944, as amended, to sell or offer or expose for sale any food under such a description as to lead an intending purchaser to believe he is purchasing that kind of food unless the food complies with such standard. The seller is deemed to sell food of that kind unless he clearly notifies the purchaser at the time of sale that the food is not of that kind.

In the present case, if the ice-cream complies with the standard prescribed, we think the seller would be intitled to use the word "pure." With regard to the word "dairy," the natural implication is that the ice-cream is manufactured in a dairy. If it is not so manufactured, it is possible that there might be an infringement of s. 6 of the Food and Drugs Act, 1955, or of s. 2 of the Merchandise Marks Act, 1887, especially in view of the extended definition of "trade description" contained in s. 1 (3) of the Merchandise Marks Act, 1953.

5.—Highway—*Public footpath—Use by vehicles.*

A public footpath, shown as such in the definitive map prepared under s. 32 of the National Parks and Access to the Countryside Act, 1949, is bounded on one side by the gardens of council houses and on the other side by the gardens of privately owned houses. The occupiers of certain houses on each side of the footpath wish to erect garages in their gardens and to obtain vehicular access to their premises along the footpath. The occupier of one of the privately-owned houses has already erected a garage in his garden, with access to the footpath. In this case, the council had no ground to refuse the application submitted under the building byelaws (application for planning permission was not required), but they did inform the applicant that he would be committing an offence under s. 14 of the Road Traffic Act, 1930, if he drove a vehicle on the footpath.

Whereas the council can, in their capacity as landlords, forbid the erection of garages in the gardens of houses occupied by their own tenants, they are inclined to the view that such garages, having access to the footpath, would serve a useful purpose in view of the present difficulty in providing sufficient garages for the use of tenants of council estates. I have, therefore, been asked to report on whether any steps can be taken to legalize the driving of vehicles on the footpath.

It appears that the matter rests merely on the question of dedication by the owners of the soil of the footpath, and that if such owners agree to the driving of vehicles on the footpath to and from premises having access thereto, then such agreement would constitute the "lawful authority" mentioned in s. 14 (1) of the Road Traffic Act, 1930, and no offence would be committed. It is assumed that the ownership of half the width of the footpath is vested in the council, and that ownership of the other half is divided between the owners of the privately owned houses abutting thereon.

I should be glad to know whether you agree with my view, and, if so, whether it would be necessary to obtain the concurrence of the county council, as local planning authority. If my view is not correct, can you suggest any other procedure whereby the driving of vehicles on the footpath could be legalized?

P. SOLON.

Answer.

We agree that dedication by the owners is the way out of the difficulty and the consent of the county council is not necessary.

6.—Husband and Wife—*Separation order—Non-cohabitation clause—Husband returns to home against wife's will.*

We recently obtained an order in a magistrates' court for a client on the ground of the persistent cruelty of her husband. This order contained a non-cohabitation clause. On the same day as the order was obtained her husband was sent to prison for two months for committing a further offence while on probation.

The husband has spent some time in a mental hospital and was a voluntary patient until shortly before he was sent to prison. On being discharged from prison he returned to the house where his wife was living, against her will. While he was in prison the wife had had the tenancy of the house transferred to her. The wife told her husband to go but he did not do so. After considerable pressure the police did consent to take some action and twice removed him from the house to the town about six miles away and on each occasion he returned home. The wife has a separate bedroom and her husband looks after himself. The wife is very anxious about the position because although her husband draws unemployment benefit covering herself and the five children he pays her nothing and after he has drawn this money he drinks too much and is likely to become dangerous.

We are fairly confident that there has been no resumption of cohabitation here which would make the separation order lapse. We have, however, been looking into the question of enforcing, if possible, the non-cohabitation clause.

It is obviously quite wrong that the husband should be able to nullify the clause which was inserted for the benefit of the wife, at his pleasure without any redress for the wife.

We have not been able to find any authority governing the question how the court can enforce a non-cohabitation clause. Does s. 54 of the Magistrates' Courts Act, 1952, apply? FEROR.

Answer.

This is a difficult situation, and, although s. 54 of the Magistrates' Courts Act, 1952, would apply, we do not think it would be of much practical value as it could only operate after the real damage had been done. It would be possible for the wife, if she could prove that the husband's conduct was liable to cause a breach of the peace, to apply to have him bound over with or without sureties, but we feel a much more certain remedy would be by way of injunction.

7.—Magistrates—*Practice and procedure—Defence certificate—Several defendants on one charge—One or several certificates?*

The Poor Persons Defence Act, 1930, s. 1, enables a defence certificate to be granted "in respect of any person" in certain circumstances. Section 3 requires an order directing payment of his costs where a defence certificate has been granted "in respect of any person." Do these two sections indicate that a defence certificate can only be granted in respect of one person or may it be granted in respect of several defendants, all of whom are charged together with one offence?

This question is of considerable importance where there are say six defendants and one defending solicitor and counsel are to be paid from public funds. The Poor Persons Defence (Fees and Expenses) Regulations, 1953, say that "there shall be allowed to the solicitor assigned under a defence certificate a fee not exceeding £4 14*s.* 6*d.*" and to counsel a fee not exceeding £4 17*s.* I read this as indicating that there should be one fee per defence certificate and not one fee per defendant. Does this necessarily indicate that under the Act a separate defence certificate must be granted to each defendant?

Can s. 1 of the Interpretation Act, 1889, be called in aid? If the singular includes the plural, then can the Act of 1930 be considered as permitting the granting of a defence certificate "in respect of any person or persons" or is that contrary to the natural significance of the words used?

It is appreciated that in some circumstances (for example where there is a conflict of evidence or the possibility of differing defence) an omnibus defence certificate would be inappropriate, but my question refers to the simpler case where the defence for one defendant is that for all. I shall be most grateful for your opinion as to the correct interpretation of these provisions.

F. PAXIFRAGE.

Answer.

We have answered similar queries before and, in our opinion, each defendant is entitled to a certificate. We understand that the practice in this respect does vary and, if the matter were put to the test, it might be held that in this case the singular includes the plural. But, until such a decision, we adhere to our opinion.

8.—Magistrates—*Enforcement of fines—Defendant in prison—No means inquiry—Consecutive sentence.*

I should be glad of your advice on a rather unusual point. Some time ago my magistrates fined a man, for exceeding the speed limit, the sum of £3. This fine has not been paid and since then he has been sent to prison for two years by another court for a different offence. The fine is outstanding in my books and I was proposing to leave it outstanding until the end of his term of imprisonment. He has written to me asking if I would " get this small matter dealt with and give me the alternative to the fine in a prison sentence and notify the governor."

I propose to bring the matter before my magistrates and advise them that they have the alternatives of either directing that no proceedings should be taken until he is free again, or of issuing a warrant of commitment, and that if they do the latter no inquiry as to means is necessary under s. 70 of the Magistrates' Courts Act, 1952. Obviously the man wants another sentence which shall run concurrently, to wipe out the fine as indicated in the footnote on p. 86 of *Stone*.

Is there any reason why they should not order his sentence to run consecutively under s. 108 of the Act? Do you consider that, although s. 70 is stated not to apply to people already in prison, there is a general principle that a man should not be imprisoned in default of payment of a fine unless the magistrates think that it should have been paid?

LORNO.

Answer.

The interpretation of what is now s. 70 of the Magistrates' Courts Act, 1952, was dealt with in the cases of *R.* v. *Woking JJ., ex parte Johnstone* (1942) 106 J.P. 232; [1942] 2 All E.R. 179, and *R.* v. *Dunne, ex parte Sinnatt* (1943) 107 J.P. 161; [1943] 2 All E.R. 222. We think that the answer to the last point in the question is provided by the judgments in those cases.

We agree that the justices are not obliged to deal with the enforcement of the fine while the defendant is in prison, but the modern practice is to try to ensure that on release from prison after serving a sentence the defendant starts with a clean sheet. In our view it is much better that the alternative for non-payment of the fine should be fixed and the warrant sent to the prison where he now is. Section 108, *supra*, allows the alternative sentence to be made consecutive to that which he is now serving but in view of the length of that sentence we very much question whether that course should be adopted.

9.—National Assistance—*National Assistance Act*, 1948, *s.* 43—*Time limit for complaint.*

With reference to your P.P. 11 at 118 J.P.N. 522, are you of opinion that the hearing of a complaint for an order under s. 43 of the National Assistance Act, 1948, is subject to the six months' limitation imposed by s. 104 of the Magistrates' Courts Act, 1952 and that the time limit of three years mentioned in s. 56 of the National Assistance Act, 1948, applies only to subsequent proceedings for the recovery summarily as a civil debt of arrears accruing under the original order; or is it your view that the latter time limit applies equally to the first mentioned proceedings?

H.N.A.B.

Answer.

We think that the time limit for a complaint for an order under s. 43 of the Act is the normal one of six months. The extended time limit of three years in s. 56 (2) of the Act would seem to apply only to recovery after an order under s. 43 has been made.

10.—Road Traffic Acts—*Insurance—Sale of insured car—Subsequent claim under the policy in respect of another car.*

A, an apprentice motor engineer, is the owner of a motor car, and took out an insurance policy valid from August, 1957, till August, 1958, which covered him for driving his own car, and also any motor car not belonging to him. He sold his car in October, 1957, but did not notify his insurance company of the sale, nor did he claim any rebate on the amount paid for the policy.

Six weeks later, he borrowed a car belonging to B, and was involved in an accident whilst driving it. B had not obtained an insurance policy covering the use of the car, and A now relies on the clause in the policy for the car which he previously owned, to cover him for driving B's car. The insurance company supports this.

A's policy makes no mention of its validity on the sale of the car, but under the heading " suspension of cover " it says, " upon notice being given to the insurers that the motor car described in the schedule is to be laid up and out of use the insurance granted by this policy shall be deemed to be suspended automatically." This strengthens my view that the policy either stands or falls as a whole.

The case of *Peters* v. *General Accident Fire and Life Assurance Corporation Limited* [1938] 2 All E.R. 267, gives a clear decision on the effect which the sale of a car has on the policy of insurance, so far as assignment to any other person is concerned, but the case of *Tattersall* v. *Drysdale* (1935) 153 L.T. 75 is even more relevant, and Goddard, J., as he then was, said:

" The true view in my judgment is that the policy insures the assured in respect of the ownership and user of a particular car, the premium being calculated, as was found in *Rogerson's Case*, partly on value and partly on horsepower. It gives the assured by the extension clause a privilege or further protection while using another car temporarily, but it is the scheduled car which is always the subject of insurance. Though the words differ in the two policies, the effect and intention seem to me to be the same, and express provision is made for what is to happen when the assured parts with the car. To construe this policy otherwise would be to hold in effect that two distinct insurances were granted, one in respect of the scheduled car, and another wholly irrespective of the ownership of any car (*r*). It may be that a person who does not own a car can get a policy which would insure him against third party risks whenever he happens to be driving a car belonging to someone else; but the clause I am considering is expressly stated to be an extension clause, that is, extending the benefits of this policy, and accordingly if the assured ceases to be interested in the subject matter of the insurance, the extension falls with the rest of the policy."

Further, A's car has now been sold to C, and it therefore follows that in relation to that car, insurance will be standing in the name of both A and C.

I am of the opinion that A has committed an offence against s. 35 of the Road Traffic Act, 1930, on the grounds that A's policy, in its entirety, lapsed on the sale of his car. I consider that the contract for the insurance was based on A's car, and that the clause enabling him to drive other cars was merely a privilege arising from the main contract, and that, therefore, this particular clause could not, by itself, be kept alive. Do you agree?

IBONA.

Answer.

We answered a practical point involving the same question at 116 J.P.N. 546.

We agree with our correspondent's view for the reasons which he gives. We think that *Rogerson* v. *Scottish Automobile* (1931) 146 L.T. 26 is a further authority in support of this view. This case is noted in *Bingham's Motor Claims Cases*, 3rd edn., at pp. 519–520.

11.—Tort—*Dog kills chickens, etc.*

Your answer to P.P. 7 at 122 J.P.N. 325, seems open to question in so far as you suggest that the owner of the chickens has a claim against the owner of the dog for the value of the chickens which it has killed. *Winfield on Tort* lists three categories of " animal torts " into which it might be possible to place the dog's actions:

1. Cattle trespass;
2. *Scienter*;
3. Negligence or deliberate act of its owner.

As to 1., *Buckle* v. *Holmes* (1926) 90 J.P. 109 decides that cattle trespass does not apply to dogs and cats. *See* also *Tallents* v. *Bell & Goodman* [1944] 2 All E.R. 474. As to 2., it must be shown (*a*) that the dog had propensities foreign to its nature as a domestic animal (which does not apply here, as dogs are known to chase other animals) or (*b*) that it has particularly mischievous habits (*Read* v. *Edwards* (1864) 11 L.T. 311). There will only be liability under 3. if it can be shown that the owner deliberately set his dog on to the chickens, or that he was negligent in not keeping it confined when he knew that it was likely to do such damage, which is almost the same as 2. (*b*).

It seems to me that there is no liability under any of these heads, but I should be interested to hear your comments as it is not an uncommon problem.

CINLO.

Answer.

The owner of a dog is liable in damages for injury done to . . . poultry, whether or not such owner was aware of a propensity in the dog to do such injury, and whether or not the injury is attributable to any negligence on the part of such owner. The present law is thus stated in *Jenks' Digest*, edn. of 1947, para. 763; this part of *Jenks* was revised by Professor Winfield, in the light of s. 1 of the Dogs (Amendment) Act, 1928, which put earlier contrary decisions out of date. In *Tallents* v. *Bell and Goodman*, *supra*, the dog's victims were rabbits.